

BOARD OF ADJUSTMENT

MEETING MINUTES

September 6, 2018

City Hall – Council Chambers

Regular Members Present: Larry Caldwell, Charles Haubold, Tim Kelley, Skip Smallwood,
William Whitlock

Regular Members Absent: None

Alternate Members Present: None

Alternate Members Absent: Ray Buhs, Ed Hart, David Hinton

Staff Present: Carol Peters, Ryan Shrimplin

Call to Order

Chairman Haubold called the meeting to order at 7:00 p.m.

Approval of Minutes

The minutes of the July 5, 2018 Board of Adjustment meeting were unanimously approved upon motion made by Mr. Smallwood and seconded by Mr. Caldwell.

ZONING CODE VARIANCES

1. A public hearing was held on the request of Landmark Lodging for a variance from Section 30-334(f)(4)a, C-2 (Highway Commercial District) front yard setback requirements, at 3008 Gordonville Road. Mr. Chris Koehler, Koehler Engineering & Land Surveying, represented the applicant. He explained that his client wishes to construct an accessory building at the north end of the property. A variance is being requested because the proposed location of the building is within the front yard setback due to the unusually wide right-of-way in that area. He explained that the right-of-way extends over sixty (60) feet from the center of the street to the property line. The proposed building location is eleven (11) feet from the property line but fifty (50) feet from the edge of the street pavement. Mr. Koehler further explained that his client is working with City staff to have a portion of the right-of-way vacated. If the City Council approves the vacation, the setback will move further out and the building will then be in compliance with the minimum setback requirement.

A staff report was submitted to the Board, containing the following findings of fact in reference to the variance request:

Criterion #1: The variance request arises from a condition which is unique to the property in question and which is not ordinarily found, and is not created by an action or actions of the property owner or the applicant.

Finding: The subject property is an interior lot with frontage on Gordonville Road. The right-of-way along this frontage makes an abrupt "jog" and becomes

approximately 20 feet wider near the mid-point of the frontage. In addition, the rear half of the subject property contains a steep slope. These two circumstances form a unique condition of the subject property which was not created by the property owner or applicant and which restricts the placement of the proposed building.

Criterion #2: Approval of the variance request will not adversely affect the rights of adjacent property owners or tenants.

Finding: Staff has discussed the irregular shape of the right-of-way along this section of Gordonville Road and concluded there is no apparent reason for the 20 foot "jog". If the right-of-way did not "jog" and was instead uniform at the narrower width, then the location of the proposed building would be behind the front yard setback. Additionally, there is a building on a nearby lot (3000 Gordonville Road) that encroaches on the front yard setback due to the wider right-of-way. Both of these facts support the argument that the location of the proposed building will not appear out-of-place if the variance request is approved. As such, approval of the variance request will not adversely affect the rights of adjacent property owners or tenants.

Criterion #3: The strict application of the provisions of the Zoning Code from which the variance is requested will constitute unnecessary hardship upon the utilization of the property.

Finding: Denial of the variance request will force the property owner to bring in extensive fill and grade out the rear slope in order to place the proposed building behind the front yard setback, or shorten the building length by approximately 15 feet. Given the unique condition of the subject property and the lack of an adverse effect on adjacent property owners or tenants, either option would be unduly burdensome on the property owner and result in an unnecessary hardship.

Criterion #4: Approval of the variance request will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Finding: As stated previously, the location of the proposed building will not appear out-of-place if the variance request is approved. Thus, approval of the variance request will not adversely affect the public.

Criterion #5: Approval of the variance request is consistent with the general spirit and intent of the Zoning Code.

Finding: The unique condition of the subject property, the unnecessary hardship that will result if the request is denied, and the lack of an adverse effect on the adjacent property owners, tenants, and the public form the basis for approving the variance request in keeping with the general spirit and intent of the Zoning Code.

Based on the above findings, staff recommended approval of the variance request.

Chairman Haubold opened the public hearing and seeing no appearances to speak, he closed the public hearing. A motion was made by Mr. Smallwood and seconded by Mr. Caldwell to approve the variance request. The motion passed by a vote of 5 in favor, 0 in

opposition, and 0 abstaining. (Aye: Caldwell, Haubold, Kelley, Smallwood, Whitlock) Chairman Haubold called for a motion to adopt the staff report as the Board's Findings of Fact and Conclusions of Law. Mr. Caldwell made a motion to adopt, and Mr. Whitlock seconded the motion. The motion passed by a unanimous vote.

2. A public hearing was held on the request of Gregory J. and Gina A. Laurentius for a variance from Section 30-321(f)(5)b, RE (Rural Estate Residential District) rear yard setback requirements, at 267 Brandy Lane. Mr. Greg Laurentius, applicant, explained that he wishes to construct an accessory building on the property. Although he would have preferred to locate the accessory building next to the house, the topography in those areas precludes him from doing so as it would greatly increase the project costs. Instead, he is proposing to construct the accessory building in the southeast corner of the lot. In order to avoid having the accessory building directly across from his front door, he wishes to offset the building to the south. In response to a question from Mr. Smallwood, Mr. Laurentius stated that the accessory building is needed for storing home and yard equipment, and that it would not be visible from the neighboring properties.

A staff report was submitted to the Board, containing the following findings of fact in reference to the variance request:

Criterion #1: The variance request arises from a condition which is unique to the property in question and which is not ordinarily found, and is not created by an action or actions of the property owner or the applicant.

Finding: The subject property is a lot in the Wild Horse Creek Ranch subdivision, which was platted in two phases (1994 and 1997). The subdivision was outside the city limits until it was annexed in 2012. Prior to annexation, the subdivision was not subject to zoning regulations; therefore, there were no setbacks applicable to the lot. Due to topography, the existing home was built near the southeast corner of the lot, also prior to annexation. As part of the annexation process, the lots in the subdivision were zoned to the RE district, which requires deep setbacks to account for the larger lots. The fact that the subdivision, the lot, and the home preceded the annexation constitutes a unique condition which was not created by the owner or applicant.

Criterion #2: Approval of the variance request will not adversely affect the rights of adjacent property owners or tenants.

Finding: The proposed location of the accessory building is near a 61.72 acre tract which is undeveloped and wooded along the side adjacent to the subject property. The other adjacent property near the proposed site is owned by a member of the Wild Horse Creek Building Committee, which has approved the proposed specifications for the building, including its location. As such, approval of the variance request will not adversely affect the rights of adjacent property owners or tenants.

Criterion #3: The strict application of the provisions of the Zoning Code from which the variance is requested will constitute unnecessary hardship upon the utilization of the property.

Finding: If the variance is denied, the applicant will be forced to position the accessory building directly across from the front entrance of his home or clear another area on the lot as well as cut and/or fill the topography to provide a level surface for the building. Given the unique condition of the subject property and the lack of an adverse effect on adjacent property owners or tenants, either option would be unduly burdensome on the property owner and result in an unnecessary hardship.

Criterion #4: Approval of the variance request will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Finding: As discussed above, approval of the variance request will not adversely affect the two (2) property owners most affected by it. Due to the remoteness of the proposed site, approval of the variance will also not adversely affect the public.

Criterion #5: Approval of the variance request is consistent with the general spirit and intent of the Zoning Code.

Finding: The unique condition of the subject property, the unnecessary hardship that will result if the request is denied, and the lack of an adverse effect on the adjacent property owners, tenants, and the public form the basis for approving the variance request in keeping with the general spirit and intent of the Zoning Code.

Based on the above findings, staff recommended approval of the variance request.

Chairman Haubold opened the public hearing and seeing no appearances to speak, he closed the public hearing. A motion was made by Mr. Kelley and seconded by Mr. Whitlock to approve the variance request. The motion passed by a vote of 5 in favor, 0 in opposition, and 0 abstaining. (*Aye: Caldwell, Haubold, Kelley, Smallwood, Whitlock*) Chairman Haubold called for a motion to adopt the staff report as the Board's Findings of Fact and Conclusions of Law. Mr. Whitlock made a motion to adopt, and Mr. Kelley seconded the motion. The motion passed by a unanimous vote.

3. A public hearing was held on the request of Keystone Design for a variance from Section 30-333(f)(4)a, C-1 (General Commercial District) front yard setback requirements, at 2001 William Street. Ms. Pam Davidson, applicant, explained that the project involves enclosing a former bank drive-thru canopy, a portion of which is in the front yard setback. Last year, the Board of Adjustment denied a variance request to allow the portion of the canopy in the setback to be enclosed. After the denial, the project was revised to only enclose the portion of the canopy behind the setback. As directed on the construction plans, the contractor ordered a property boundary survey, which showed the property line closer to the canopy than what was shown on the site plan. Based on the actual property line, the project cannot move forward without a variance granted to allow the enclosed canopy in the setback.

A staff report was submitted to the Board, containing the following findings of fact in reference to the variance request:

Criterion #1: The variance request arises from a condition which is unique to the property in question and which is not ordinarily found, and is not created by an action or actions of the property owner or the applicant.

Finding: The subject property is a lot in a group of contiguous lots being used for a single development. The overall property borders a street on all four sides. Per the Zoning Code, the yard along each of these sides is a front yard. These characteristics constitute a unique condition which was not created by the applicant or the property owner.

Criterion #2: Approval of the variance request will not adversely affect the rights of adjacent property owners or tenants.

Finding: The rights of adjacent property owners or tenants will not be adversely affected if the variance request is approved because of the unique condition of the property that serves to justify the approval. There is also no adverse effect from the building being in the proposed location because the canopy has been in that location since it was constructed many years ago, and it has not created any adverse effects.

Criterion #3: The strict application of the provisions of the Zoning Code from which the variance is requested will constitute unnecessary hardship upon the utilization of the property.

Finding: Part of the basis for the Board's previous denial was that most of the canopy could still be enclosed even if the variance request was denied, which meant there was no hardship case. The new information regarding the actual location of the front lot line makes the project infeasible if the current variance request is denied. This is because several of the existing columns supporting the canopy will have to be removed to comply with the setback. The loss of structural support will require a majority of the canopy to be removed, effectively rendering the project cost-prohibitive due to the redesign and reconstruction that would be necessary. This constitutes an unnecessary hardship.

Criterion #4: Approval of the variance request will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Finding: As stated previously, the canopy to be enclosed has been in its current location for many years, and has not created any adverse effects. It is located far enough away from the intersection that it will not create a sight distance issue. Therefore, approval of the variance request will not adversely affect the public.

Criterion #5: Approval of the variance request is consistent with the general spirit and intent of the Zoning Code.

Finding: The unique condition of the subject property, the unnecessary hardship that will result if the request is denied, and the lack of an adverse effect on the adjacent property owners, tenants, and the public form the basis for approving the variance request in keeping with the general spirit and intent of the Zoning Code.

Based on the above findings, staff recommended approval of the variance request.

Chairman Haubold opened the public hearing and seeing no appearances to speak, he closed the public hearing. Chairman Haubold stated that the project appears to be already under construction, and he asked Mr. Shrimplin why the City has not stopped the work. Mr.

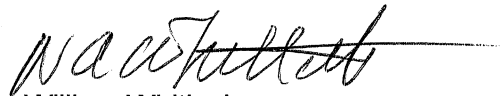
Shrimplin explained that the City issued a building permit based on plans that did not show the portion of the canopy in the setback being enclosed. The survey was not completed until after the permit was issued. Chairman Haubold stated that he felt it would be better to remove the canopy and construct an addition alongside the building, which would not encroach on the setback and therefore not require a variance. Ms. Davidson stated that such an option would be cost-prohibitive due to the redesign and reconstruction that would be necessary. In response to a question from Mr. Smallwood, Ms. Davidson confirmed that the entire building will be occupied by her client (Southeast Hospital College of Nursing & Health Sciences). She explained that the existing building is needed for office space, so the canopy is being enclosed for new classrooms.

A motion was made by Mr. Smallwood and seconded by Mr. Kelley to approve the variance request. The motion failed by a vote of 3 in favor, 2 in opposition, and 0 abstaining. (*Aye: Caldwell, Kelley, Whitlock; Nay: Haubold, Smallwood*) Chairman Haubold stated that he does not believe the request meets the criteria for unnecessary hardship because it is possible to construct an addition to the building without encroaching on the setback. Mr. Smallwood stated that he also does not believe the request meets the criteria for unnecessary hardship. Chairman Haubold called for a motion to adopt the staff report as the Board's Findings of Fact and Conclusions of Law with the exception of Criteria #3, which was not met for the reason previously stated by Chairman Haubold. Mr. Smallwood made a motion to adopt, and Mr. Whitlock seconded the motion. The motion passed by a vote of 3 in favor, 2 in opposition, and 0 abstaining. (*Aye: Haubold, Smallwood, Whitlock; Nay: Caldwell, Kelley*)

Adjournment

Upon motion made by Mr. Caldwell and seconded by Mr. Whitlock, the meeting was adjourned unanimously at 7:20 p.m.

Respectfully submitted,



William Whitlock
Secretary